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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,060	06/08/2006	Imants Deme	TS9512 US	1596
23632 7590 05/24/2011 SHELL OIL COMPANY P O BOX 2463 HOUSTON, TX 772522463				
EXAMINER				
PARVINI, PEGAH				
ART UNIT		PAPER NUMBER		
1731				
MAIL DATE		DELIVERY MODE		
05/24/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/582,060

**Applicant(s)**

DEME, IMANTS

**Examiner**

PEGAH PARVINI

**Art Unit**

1731

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-14, 16-18, 20-24, 30, 32-36 and 38-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-14, 16-18 and 20-24 is/are allowed.
- 6) ☒ Claim(s) 30, 32-36 and 38-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 27, 2010 has been entered.

### ***Response to Amendment***

This Office Action is in reply to the RCE/amendment filed 1/27/2010. After entry of this amendment, claims 10-14, 16-18, 20-24, 30, 32-36, and 38-45 are currently pending in this application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 30, 32-36, and 44** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claim 30 recites "without the substantial addition of bitumen or aggregate, or both"; however, the specification does not provide support on the substantial absence of bitumen or aggregate when mixing elemental sulphur and H<sub>2</sub>S-suppressant to make pellets as claimed instantly.

Instant claims 32 to 36 are rejected as being dependent upon a rejected claim.

**Claims 38-43 and 45** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 utilizes the phrase "consisting essentially of" which according to MPEP 2111.02, limits the scope of a claim to the specified materials or steps and those that do not materially affect the absence and novel characteristic(s) of the claimed invention; however, the recitation on the use of from "0.2% to 10%" of suppressant and "at least about 75%" of sulphur, would leave an amount of about 15% of other material when considering 75% of sulphur, and the maximum claimed amount of suppressant. A content of 15% is a substantial amount, and if a component can be added in 15% to the claimed composition of claim 38, then how could it not materially affect the basic and novel characteristic(s) of the claimed invention? Clarification is requested.

In addition, claim 38 is further confusing because "at least 75%" of sulphur includes 100%; however, there should be at least a suppressant present in an amount

of 0.2% to 10%. Thus, the amount of sulphur cannot be "at least" 75%. In other words, there is no upper limit for it.

Furthermore, in reference to claim 39, an upper limit is missing especially in view of the phrase "at least" in said claim and "consisting essentially of" in claim 38 as detailed out above.

Claims 39-44 and 45 are rejected as being dependent upon a rejected claim.

### ***Response to Arguments***

Applicants' arguments, see pages 2-9, filed 1/27/2010, with respect to claims claim10-14, 16-18, 20-24 have been fully considered and are persuasive. The rejection of said claims has been withdrawn.

Applicants' arguments with respect to claims 30, 32-36, and 38-45 are persuasive, and previous rejections presented in the Non-Final mailed on 2/26/2009 and repeated in the Final mailed on 10/27/2009 have been withdrawn. However, said claims stand rejected under 112 as detailed out above.

### ***Allowable Subject Matter***

**Claims 10-14, 16-18, and 20-24** are allowed.

The following is an examiner's statement of reasons for allowance: pursuant to applicants' argument and amendment, the prior art do not disclose or suggest a process to manufacture a sulphur-comprising asphalt paving mixture, wherein the process comprises the steps of (i) preheating bitumen at a temperature of between 120 and

180C to provide a hot bitumen, (ii) preheating aggregate at a temperature of between 120 and 180C to provide a hot aggregate, (iii) providing a sulphur pellets comprising elemental sulphur, an  $H_2S$ -suppressant, and optionally a filler, (iv) mixing the hot bitumen with the hot aggregate and the sulphur pellets in a mixing unit. Furthermore, the prior art do not disclose or suggest a sulphur pellet composition consisting essentially of elemental sulphur, an  $H_2S$ -suppressant, and optionally a filler.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEGAH PARVINI whose telephone number is (571)272-2639. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pegah Parvini/  
Examiner, Art Unit 1731